

11-26-04

1 DW/JMK

Attorney Docket No. 9368.5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

NOV 24 2004

PATENT

In re: Smith et al.

Confirmation No. 7017

Application Serial No.: 10/804,331

Group Art Unit: 1648

Filed: March 19, 2004

For: *Improved Alphavirus Replicons and Helper Constructs*

November 24, 2004

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO GRANT A FILING DATE FOR A COMPLETE NON-PROVISIONAL APPLICATION

Sir:

In response to the Notice of Incomplete Non-Provisional Application, Applicant hereby petitions to assign the filing date of March 19, 2004, for the above-identified patent application as this was the date the Application (including the 1 formal drawing sheet) was deposited as "Express Mail" in the U.S. Postal Service. The following is enclosed as evidence of March 19, 2004 being the filing date for the application which was properly filed under 37 C.F.R. § 1.10:

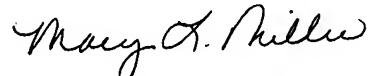
1. A true and accurate copy of the Transmittal for the Application showing that 1 formal drawing sheet was included and the Express Mail signature and date on Page 2;
2. A true and accurate copy of the Express Mail Receipt marked by the United States Postal Service ("USPS") as a "date-in" or deposit date with the USPS of March 19, 2004;
3. A true and accurate copy of the 1 formal Drawing sheet included with the Application; and
4. A true and accurate copy of our return post card indicating that the Application was received by the USPTO (granting an initial filing date of March 19, 2004) and indicating the inclusion of the 1 formal drawing sheet with the application.

This petition is being filed promptly after Applicant became aware that no filing date has been granted as indicated in the Notice of Incomplete Non-Provisional Application (a copy of which is enclosed). Accordingly, Applicant respectfully requests the granting of March 19, 2004 as the filing date in view of the evidence provided with the present petition.

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The Commissioner is authorized to charge the required fee of \$130.00 to Deposit Account No. 50-0220 for consideration of the present petition. However, Applicant concurrently hereby petitions for a refund of the petition fee (\$130.00) on the basis that Applicant properly followed the requirements of 37 CFR § 1.10 and the USPTO failed to accord the proper filing date under MPEP § 505. Thus the need to file this petition is due to error on the part of the USPTO. The Commissioner is authorized to charge any deficiency, credit any overpayments or refunds to Deposit Account No. 50-0220.

Respectfully submitted,



Mary L. Miller
Registration No. 39,303

Attorney For Applicant
USPTO Customer No. 20792
Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401

CERTIFICATE OF EXPRESS MAILING

Express Mail Label No.: EV 473659545 US

Date of Deposit: November 24, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Cathy A. Schetzina



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY DOCKET NO.: 9368.5
DATE: March 19, 2004

**UTILITY PATENT APPLICATION TRANSMITTAL LETTER
AND FEE TRANSMITTAL FORM (37 CFR § 1.53(b))**

Mail Stop PATENT APPLICATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing under 37 CFR § 1.53(b) is:

a patent application
 a Continuation a Divisional a Continuation-in-Part (CIP) Application of prior application no.: filed, the disclosure of which is incorporated herein by reference in its entirety.
 and claims the benefit of Provisional Application No. 60/456,196; filed March 20, 2003.

Inventor(s) or Application Identifier:

Jonathan F. Smith, Cary, NC
Kurt I. Kamrud, Apex, NC
Jon O. Rayner, Apex, NC

Entitled:

Improved Alphavirus Replicons and Helper Constructs

Myers Bigel Sibley & Sajovec, P.A.
P. O. Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401
Customer No. 20792

Enclosed are:

1. Application Transmittal Letter and Fee Transmittal Form (*A duplicate is enclosed for fee processing*)
2. 69 pages of Specification (including 59 claims)
3. 1 sheet of Formal Drawings (35 USC 113)
4. Oath or Declaration
 - a. newly executed (*original or copy*)
 - b. copy from prior application (37 CFR 1.63(d) (*for continuation/divisional*) [Note Box 6 Below])
 - c. DELETION OF INVENTOR(S) (*Signed statement deleting inventor(s) named in the prior application*)
5. Application Data Sheet. See 37 CFR 1.76
6. Incorporation By Reference (*useable if box 4b is checked*)

The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied under Box 4b, is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.

7. Microfiche Computer Program (*Appendix*)
 8. Assignment papers (*cover sheet(s) and document(s)*)
 9. Applicant claims small entity status. See 37 CFR § 1.27.
 10. Information Disclosure Statement, PTO-1449, and _____ references cited
 11. Preliminary Amendment (*Please enter all claim amendments prior to calculating the filing fee.*)
 12. English Translation Document
 13. Certified Copy of Application No. _____ ; Filed
 14. Sequence Listing/ Sequence Listing Diskette

- a. computer readable copy
- b. paper copy
- c. statement in support

 15. An Associate Power of Attorney
 16. Return Receipt Postcard (MPEP 503) (*Should be specifically itemized*)
 17. Deletion of Inventor(s) (*Signed statement attached deleting inventor(s) name in the prior application. See 37 CFR 1.63(d)(2) and 1.33(b).*)
 18. Nonpublication Request under 35 U.S.C. 122(b)(2)(B)(i). Applicant must attach form.
 19. Other:

The fee has been calculated as shown below:

	Column 1 No. Filed	Column 2 No. Extra	Small Entity Rate	Large Entity Rate
BASIC FEE			\$385.00	\$ 770.00
TOTAL CLAIMS	59 - 20 =	39	x 09 = \$351.00	x 18 = \$
INDEP CLAIMS	6 - 3 =	3	x 43 = \$129.00	x 86 = \$
<input type="checkbox"/> MULTIPLE Dependent Claims Presented			+ 145 = \$	+ 290 = \$
<i>If the difference in Col. 1 is less than zero, Enter "0" in Col. 2</i>			Total \$865.00	Total \$

A check in the amount of \$865.00 to cover the filing fee is enclosed.
 A check in the amount of \$ _____ is enclosed to cover the filing fee, PLUS the Assignment Recordation fee (\$40.00).
 Please charge my Deposit Account No. 50-0220 in the amount of \$ _____.
 The Commissioner is hereby authorized to credit overpayments or charge the following fees associated with this communication to Deposit Account No. 50-0220:

- a. Additional filing fees under 37 CFR 1.16 for presentation of extra claims.
- b. Additional patent application processing fees under 37 CFR 1.17.

Respectfully submitted,



Mary L. Miller
Registration No. 39,303

CERTIFICATE OF EXPRESS MAILING

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Cathy A. Schetzina



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